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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 437

COLORADO-UTE ELECTRIC ASSOCIATION, INC., a cooperative association, *Appellant*,

v.

THE WESTERN COLORADO POWER COMPANY, a Colorado corporation, PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, and THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO, HENRY E. ZARLENGO, RALPH C. HORTON, and HOWARD S. BJELLAND, the individual members of said Commission, *Appellees*.

PETITION FOR REHEARING OF APPELLANT COLORADO-UTE ELECTRIC ASSOCIATION, INC.

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In accordance with Rule 58 of the Rules of the United States Supreme Court, it is respectfully prayed that this Honorable Court grant Appellant Colorado-Ute Electric Association, Inc., hereinafter referred to as Colorado-Ute, a rehearing of this Court's per curiam decision of October 24, 1966, in the above-entitled matter dismissing the appeal of Colorado-Ute for want of

jurisdiction. The reasons for this Petition are as follows:

1. The statutes of the State of Colorado, and principally 1963 CRS 115-5-1, deny Appellant fair and equal treatment under the law. A large number of people in Colorado banded together in an effort to construct their own electric generating facilities, such people being in an area not certificated to any public utility. The statutes of the State of Colorado, however, as interpreted and applied by the Colorado Supreme Court, preclude these people from constructing facilities to meet their own needs only, and instead require them to purchase either from non-public utility sources (from which they have no right to demand service) or from investor-owned power companies which have not theretofore served the area and which do not have facilities in the area to meet the needs of the people. Such, we submit, makes these people captives of the power companies, and cuts at the very core of a free and independent people.

2. The statutes of the State of Colorado, and principally 1963 CRS 115-5-1, violate the constitutional rights of Colorado-Ute by making it a public utility, thereby requiring it to serve all who may seek service, whether member or non-member, and thereby destroying its right to serve its members only, as allowed to it in its Charter from the State of Colorado and its certificate from the Public Utilities Commission of the State of Colorado. If Colorado-Ute must serve all who may apply, and such may be the effect of such statutes, then Colorado-Ute must not only violate the express provisions of its Charter from the State, but it must also violate the certificate granted to it

by the Public Utilities Commission, thereby incurring the criminal sanctions and penalties provided by Colorado law. Such, we submit, violates the constitutional rights of Colorado-Ute.

3. The decision of the Colorado Supreme Court is inconsistent with the decision of the U. S. Court of Appeals for the Fifth Circuit in *Rural Electrification Administration et al.* v. *Central Louisiana Electric Company, Inc., et al.*; 354 F. 2d 859 (January 13, 1966), wherein the Court held that certain investor-owned companies there involved do not have the right to be free of competition to the exclusion of all others. This Court, in *Central Louisiana Electric Company, Inc., et al.* v. *Rural Electrification Administration et al.*, — U.S. —, 87 S. Ct. 34, — L. Ed. 2d — (October 10, 1966), denied certiorari, thereby finalizing such decision.

4. The decision of the Colorado Supreme Court is inconsistent with the decision of the Mississippi Supreme Court in *Mississippi Power Co. et al.* v. *South Mississippi Electric Power Association, et al.*, — Miss. —, 183 So. 2d 163 (February 14, 1966), wherein the Court upheld the right of a cooperatively-owned organization to resist being made a "captive" of the power companies there involved. This Court, in *Mississippi Power Company et al.* v. *South Mississippi Electric Power Association, et al.*, — U.S. —, 87 S. Ct. 51, — L. Ed. 2d (October 10, 1966), denied certiorari, thereby finalizing such decision.

5. The decision of the Colorado Supreme Court is inconsistent with the decision of the Maine Supreme Court in *Dickenson et al.* v. *Maine Public Service Co.*, — Maine —, — A. 2d — (Docket No. 278, Law Docket

No. 607, October 21, 1966), wherein the Court held (1) that "the scales may not be weighted so as to give one competitor an unfair advantage over the other", (2) that a statute which gives one competitor a decided advantage over the other is unconstitutional, and (3) that with reference to the contention (as in the instant matter) that a private company cannot be made into a public one by legislative fiat, such cannot be done, since a "horse cannot be converted to a camel by the enactment of a statute." Such decision may well be appealed to this Court.

For the above reasons it is respectfully suggested that this Court should note probable jurisdiction of the within matter, review the foregoing decisions and the record here involved, and following such review, reverse the decision of the Colorado Supreme Court. The questions presented in this proceeding involve serious violations of constitutional rights, such questions are substantial and of great public importance, and the Court should grant rehearing and hear argument concerning them.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of this Court

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